

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 SUPERIOR COURT
 YAVAPAI COUNTY, ARIZONA
 FOR THE COUNTY OF YAVAPAI

2012 FEB 15 AM 8:57 ✓

SANDRA A. HARKHAM, CLERK

BY: *A. Hunt*

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR201080049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW
 TELEPHONIC STATUS CONFERENCE

FEBRUARY 22, 2010

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1
2 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
3 FOR THE COUNTY OF YAVAPAI

4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No V1300CR201080049
7 JAMES ARTHUR RAY,) Court of Appeals
8 Defendant.) Case No 1 CA-CR 11-0895
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10)
11)
12)
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15 BEFORE THE HONORABLE WARREN R DARROW
16 TELEPHONIC STATUS CONFERENCE
17 FEBRUARY 22, 2010
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MINA G HUNT
AZ CR NO 50619
CA CSR NO 8335

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1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Monday,
3 February 22, 2010, at Yavapai County Superior
4 Court, Division Pro Tem B, 2840 North Commonwealth
5 Drive, Camp Verde, Arizona, before Mina G. Hunt,
6 Certified Reporter within and for the State of
7 Arizona.
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1 APPEARANCES OF COUNSEL.

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE
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1 P R O C E E D I N G S

2 THE COURT: Hello. This is Warren Darrow,
3 Judge Pro Tem. And we're on the record in the case
4 of State of Arizona versus James Arthur Ray. It's
5 V1300CR201080049
6

6 And I believe I have the following people
7 who are appearing or telephonically. Everybody is
8 here telephonically. And with regard to the state,
9 Sheila Polk and Bill Hughes.
10

10 Are both of you there?

11 MS. POLK: Yes, Your Honor.

12 MR. HUGHES: Yes, Your Honor.

13 THE COURT: Thank you.

14 Also there is a victim services
15 representative, Pam Moreton?

16 MS. MORETON: Yes, Your Honor.

17 THE COURT: And then for the defendant,
18 Mr. Ray, I have Thomas Kelly, Truc Do, Luis Li.

19 All three of you there?

20 MR. KELLY: Yes, Your Honor.

21 MR. LI: Yes, Your Honor.

22 MS. DO: Yes, Your Honor.

23 THE COURT: And if somebody would speak on
24 behalf of the defendant, is the defense waiving
25 Mr. Ray's presence for this hearing?

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1 MR. LI: We are, Your Honor. This is Luis Li.

2 THE COURT: Okay. Then I also have the
3 following persons appearing telephonically as well:
4 George Brown, father of Kirby Brown; Andrea
5 Puckett, daughter of Liz Neuman.

6 Are those two people present?

7 MS. PUCKETT: Yes, we are.

8 MR. BROWN: Yes.

9 THE COURT: Then Pat McGroder and Shannon
10 Clark, attorneys on behalf of Jane Shore and Alyssa
11 Gillespie. And I think that's everybody I have
12 present.

13 Is there anybody else, anybody I have not
14 named? Okay.

15 It was requested that I set this
16 teleconference. And I'll just ask whoever whatever
17 I might be able to assist with. And whoever
18 speaks, if you just identify yourselves so that
19 Ms. Hunt can keep up with whoever is addressing the
20 Court.

21 MR. LI: Your Honor, this is Luis Li, on
22 behalf of Mr. Ray. And we had initially asked for
23 this conference on Friday because we have had a
24 conversation with Mr. Hughes in which the parties
25 were approaching a stipulation relating to a

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1 reduction of bond.

2 And if I could give a bit of background
3 and tell you where we are, Your Honor. From the
4 beginning of this case we've been in an ongoing
5 process with the county attorney's office in an
6 effort to find the appropriate bond in this case.

7 One of the major issues has been whether
8 Mr. Ray has the access that had been reported in
9 the press and that the state has at various times
10 believed that he has.

11 The state has indicated at various times
12 that Mr. Ray has approximately 10 million in
13 assets. This, I believe, has been for the most
14 part the result of a website linked to Mr. Ray's
15 website indicating that in 2008 Mr. Ray's company
16 earned some \$9.4 million in revenue. Now,
17 obviously that didn't take into account salary,
18 costs, taxes, etc. That's been the figure we've
19 been working with and I think in part where the
20 \$5 million bond has come from.

21 In an effort to work this out and just
22 disabuse the state of its understanding regarding
23 Mr. Ray's financial situation, we provided
24 voluntarily hundreds of pages of financial
25 information, including his personal tax return, his

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1 personal bank accounts, his business tax returns,
2 his business bank accounts, and other documents
3 relating to his financial situation, all of which
4 demonstrates that he does not have nearly the types
5 of assets that have been described in various
6 reports and what have you.

7 On Friday I took a trip to Prescott and
8 walked in and met with Mr. Hughes and greatly
9 appreciated him taking the meeting with me on
10 Friday afternoon.

11 And at that meeting Mr. Hughes indicated
12 that the state would be willing to stipulating
13 after back and forth of the reduction of the bond
14 to \$1 million. I said that we have to check with
15 our client. And then over the weekend I did check
16 with the client, and we agreed.

17 Now, we agreed because while we believe
18 the bond was onerous and more than appropriate
19 under these circumstances, we also believed that
20 Mr. Ray would be able to make that bond and then we
21 could all focus on the merits of the case, which is
22 what we all want to do.

23 So we spent the whole weekend working
24 with various bail bondsmen in the area seeking to
25 meet this bond. And the reality is he can't meet

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1 this bond. And the equity that he has is not as --
2 given the real estate market, it's not as
3 substantial -- sorry about that -- not as
4 substantial as he believes and we had hoped. And
5 he simply can't make it.

6 So if I could just -- you know -- give a
7 few of the details the Court may not want to hear
8 but --

9 MR. HUGHES: Your Honor, this is Bill Hughes.
10 If I can jump in. My understanding was we had a
11 stipulation, and Mr. Li told me this morning that
12 maybe we didn't, as to the bond amount. If we
13 don't have an agreement, I don't think that a
14 teleconference is worth continuing. I would rather
15 we continue with the hearing set tomorrow.

16 MR. LI: Well, I was going to say,
17 Your Honor -- I was going to end up saying it's up
18 to the Court how we want to proceed from this. We
19 really in good faith believed that we could make
20 this bond. At the end of the day we put Mr. Ray's
21 house, we put his parent's, we put his brother's
22 house on the line.

23 And the bondsman -- you know -- said
24 that's not enough and that we were many hundreds of
25 thousands of dollars short in equity. And so as a

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1 consequence -- you know -- I didn't want the Court
2 to think that we had stipulated to something in
3 anything but good faith. But I also wanted the
4 Court to know the facts. And I didn't want to -- I
5 think I've conveyed this to Mr. Hughes earlier
6 today.

7 So if the Court feels it's a better
8 approach for us to have a contested bond hearing
9 tomorrow, we can do that. And we'll file our
10 papers, as we were planning to do on Friday. And
11 we can go from there.

12 THE COURT: What -- it appears that there had
13 been an agreement reached subject to the ability to
14 meet that bond. Is that something that bears any
15 further exploration?

16 You indicated, Mr. LI, that you started
17 working on this on Friday, and it's now Monday.

18 MR. LI: Yeah. Well, Your Honor, I mean, I
19 guess there is two separate issues. One is what
20 assets are available. And on that score we've been
21 working on that for probably about a month. And
22 there is no more -- there is nothing else.

23 And the second issue is one more of a
24 technical issue relating to what a bail bondsman is
25 willing to accept on a bond of this magnitude. And

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1 as it turns out, on a bond of this magnitude they
2 discount large value properties by 80 percent --
3 excuse me -- 20 percent right off the top. As a
4 consequence, that wipes out any of the equity that
5 we would have been able to rely on on Mr. Ray's
6 house.

7 We've not been told by any of the
8 bondsmen that we've been dealing with that -- you
9 know -- a house in Beverly Hills would immediately
10 take a -- you know -- over \$500,000 haircut right
11 off the bat. And so what happens is there
12 simply -- there is the equity. But the bondsman
13 won't accept -- the surety for the bond won't
14 accept the equity, the full value or anything close
15 to full value.

16 THE COURT: Well, I don't know that there is
17 anything else to do other than to confirm the
18 hearing for tomorrow.

19 MR. LI: Yeah. That may be it, Your Honor.
20 But I did want to let the Court know that we in
21 good faith and the state has been trying to reach
22 some sort of appropriate middle ground. And we
23 just have not been able to do that.

24 So while we would accept -- you know -- a
25 lowering of the bond to the million dollars, we

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1 would want to be able to reserve the ability to
2 continue this conversation. Because frankly, even
3 that amount is probably not reachable.

4 THE COURT: If Mr. Hughes or Ms. Polk would
5 comment on this. If you're suggesting and there is
6 an agreement that the bond would be lowered to a
7 million dollars and that's what it is and there
8 could still be some work on that, I would accept
9 that and impose that, and then there could be
10 further hearing.

11 Or if that's just not something that is
12 going to be fruitful and it's just time to have the
13 hearing, then I would do that.

14 Ms. Polk or Mr. Hughes.

15 MR. HUGHES: Your Honor, the million dollar
16 figure that the parties have reached agreement on
17 was the contemplation that there wouldn't be a
18 hearing or a contested bond reduction motion.

19 I'm afraid to be getting in a position
20 where we start to, basically, argue against
21 ourselves if we come up with a million dollar
22 figure only to have Mr. Ray then come back and use
23 that as the starting point for a further reduction
24 in the bond.

25 If Mr. Ray is willing to attempt to
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1 continue to come up with the million dollars and
2 the Court reduces it to that with the understanding
3 that that's it, it's going to be a million dollars,
4 then certainly we wouldn't have any opposition to
5 it.

6 But we don't want to be in a position
7 where we are, essentially, negotiating against
8 ourselves, where we come up with this million
9 dollars only to have it used against us later on.

10 MR. LI: Well, for whatever its worth,
11 Your Honor, we're not attempting to use it against
12 anyone. It's just the reality that this bond is
13 more than Mr. Ray can afford.

14 And I appreciated Mr. Hughes's candor on
15 Friday and the state's willingness to talk to us
16 about this. But that's the reality. If it's a
17 million dollars or if it's \$5 million and the
18 accused can't afford it, it might as well be a
19 detention order.

20 MR. HUGHES: I think that's why we need to
21 have a hearing, to determine if indeed he can't
22 afford it or not. In addition, there are concerns
23 of the victims. I know each of the three victims
24 have representatives who are involved in this
25 teleconference.

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1 Again, we came up with this number late
2 on Friday in an attempt to try and speed things up
3 and avoid having this hearing. Again, if the
4 defense is willing to agree that the million
5 dollars will be the fair amount for a bond and
6 leave it at that, I think we're still willing to go
7 ahead with that recommendation.

8 But if they're trying to, basically,
9 change what we had agreed upon, then I think we
10 will need to have the hearing.

11 MR. LI: Just so we're absolutely clear,
12 Your Honor, we're not trying to do anything. We're
13 just conveying the fact that Mr. Ray cannot afford
14 that. We in good faith spent the entire weekend
15 working with a number of bondsmen to try to meet
16 that bail. And it simply is not possible. And we
17 were hoping that we could do it, but we can't.

18 MR. HUGHES: Your Honor, the other concern
19 that I have is that after being told on the weekend
20 that we had an agreement, I contacted a forensic
21 accountant that the state had looking into this.
22 And he was spending the weekend going through the
23 materials and told him to stop work on it. I'm not
24 sure if -- I also told him we had subpoenaed him
25 for the hearing tomorrow.

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1 I'm not sure if he would be available
2 tomorrow. Because of the change, I'd ask that if
3 there is a hearing, that we hold the hearing later
4 in the week, perhaps Thursday or Friday, to give my
5 accountant time to finish the work that he had
6 started.

7 THE COURT: Mr. Li or someone from the
8 defense.

9 MR. LI: I guess on that score -- you know --
10 we don't want the Court to believe that we
11 sandbagged anybody on this. But it seems that -- I
12 went through the exact same records. And I'm not
13 an accountant. And it took me about four hours to
14 do. They are voluminous, but they're not very
15 difficult to understand.

16 And Mr. Ray's been in custody for -- it
17 will be three weeks on Tuesday and has not had a
18 hearing on -- you know -- he has no criminal
19 history. This is probation eligible. He's 51
20 years old. His parents are going to put their
21 house on the line. We've handed over -- he
22 self-surrendered. We handed over hundreds of pages
23 of financial records, which I think far exceeds
24 what your normal accused would do.

25 And I think it's probably a little

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1 unprecedented. And I think all of that -- these
2 are his tax returns, his personal bank accounts,
3 what have you.

4 All of that is a testament to the fact
5 that Mr. Ray is not running. And, you know, we
6 think that the inquiry shouldn't be can the state
7 find -- do an audit on his finances and find -- you
8 know -- 20,000 here, 40,000 there.

9 The issue here is is he a flight risk?
10 Is he a danger to the community? And Mr. Ray has
11 been in solitary confinement for three weeks
12 without a hearing on that.

13 So I'd ask that we do the hearing on
14 Tuesday.

15 THE COURT: Well, I certainly will have the
16 hearing on Tuesday. And just tell Mr. Hughes that
17 in light of what happened over the weekend, if
18 there needs to be additional testimony, I would
19 certainly entertain that request.

20 Apparently there has been some reliance
21 on what was going to happen after there appeared to
22 be an agreement. So if that happens, I would
23 certainly want to have any additional testimony or
24 evidence in some form from the account. I want to
25 have that as soon as possible.

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1 But I'm not going to foreclose that,
2 Mr. Li, just in light of the circumstance.

3 MR. LI: I understand, Your Honor.

4 THE COURT: And Mr. Hughes.

5 MR. LI: It's just important that I put on the
6 record, Your Honor, that it was not our intention
7 to even have this conversation be the way it's
8 going right now. It was our intention to have a
9 stipulated bail. And then it was also my intention
10 to fly out to Prescott -- or Verde Valley today to
11 get Mr. Ray out. It just can't happen.

12 And so that's why -- you know -- this has
13 sort of turned into a status conference as opposed
14 to a stipulated -- you know -- bond setting. And I
15 wanted to just make that clear, Your Honor.

16 THE COURT: And I don't want to get involved
17 in this any further. But I would want -- I'm
18 assuming that without -- I don't want to know what
19 any figure might have been. But I'm assuming that
20 there was a figure that someone had come up with
21 after meeting with the bondsman and looking at the
22 various records. I'm assuming that happened.

23 But in any event --

24 MR. LI: You mean on the defense side,
25 Your Honor?

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1 THE COURT: Yes.

2 MR. LI: Yes. I mean, over the weekend. And
3 I'm not going to get into it. But yes, we did go
4 through the exercise, and there is an amount.

5 THE COURT: Okay.

6 MR. LI: But I won't --

7 THE COURT: I'd ask that you not. This is a
8 contested matter --

9 MR. LI: Understood.

10 THE COURT: -- at this point.

11 I do have a couple things I want to bring
12 up. Either Mr. Hughes, Mr. Li, anything else about
13 tomorrow that you want to discuss?

14 Okay. I got another request for cameras.
15 I have a hearing that precedes this that I
16 anticipate there could be a number of witnesses.
17 I'm not sure. But at any event, I do agree with
18 the state. I've had a chance to look briefly at
19 the objection to having cameras tomorrow. And I do
20 think the rule contemplates considering it by each
21 proceeding, not just having a blanket rule.

22 Although I also think what I indicated in
23 court the last time is correct. And that is I
24 don't think any -- everyone needs to duplicate all
25 the arguments that are made in every proceeding.

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1 There ought to be some economy that can occur.

2 But in any event, there is a request for
3 tomorrow.

4 And, Mr. Hughes, I know I saw today that
5 you object to that. And I just don't want to have
6 everything revolve around having that hearing. We
7 really need to get to a point if there is a
8 hearing, it's set off far enough that we can
9 actually conduct a comprehensive hearing on the
10 camera issue and not have it, essentially, cause
11 other hearings to be delayed in order to get that
12 done. It just hasn't worked out with the Court's
13 schedule to be able to arrange other hearings.

14 So about tomorrow, I would like to take
15 that up a bit right now if there is no objection to
16 that, cameras tomorrow.

17 MS. POLK: And, Your Honor, this is Sheila
18 Polk. Do you want me to address -- are you asking
19 for argument right now on that issue?

20 THE COURT: If people don't mind, I'd like to
21 try to address it right now rather than at 3:30
22 tomorrow.

23 MS. POLK: Your Honor, that's fine with the
24 state.

25 THE COURT: Okay. As I said, I looked at the
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1 pleading the state filed.

2 Ms. Polk, what's your basic position with
3 this.

4 MS. POLK: Your Honor, as you stated, it is
5 the state's interpretation of Rule 122 that the
6 determination of whether or not to allow cameras in
7 the courtroom should be on a hearing-by-hearing
8 basis. Because when you look at each of those
9 factors, the weight to be given to each factor, of
10 course, depends on the nature of the hearing.

11 To make it clear, the state does not
12 object to still cameras in the courtroom for
13 tomorrow. But we do object to the video cameras.
14 And that goes to primarily the nature of the
15 hearing.

16 Because it's a hearing on the amount of
17 bail to be set and because it necessarily entails
18 information that does not bode the defendant's
19 guilt or innocence and information that would never
20 be presented to a jury, the likelihood of the
21 dissemination of the information tainting the
22 ultimate pool of jurors to be drawn upon when we
23 are selecting the jury is very high.

24 Additionally, because the defense has
25 submitted voluminous materials under seal, that

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1 creates a problem, I think, in terms of media
2 coverage of the hearing. Just logistically to have
3 cameras in the courtroom and yet have discussion of
4 materials that have been submitted under seal,
5 examination of witnesses and cross-examination of
6 witnesses that are under seal -- of records that
7 are under seal, I think, is very, very problematic
8 in terms of the dissemination, again, of
9 information that is not relevant ultimately to the
10 determination of guilt or innocence of the
11 defendant.

12 And, again, because the concern of all
13 parties involved should be a fair trial for the
14 defendant, the risk of contamination of a pool and
15 the weight, then, to be given to that particular
16 factor under Rule 122, I believe, falls more
17 heavily in favor of excluding the video recording
18 of the proceedings.

19 And I guess, Judge, as I'm saying this
20 out loud, I think also any electronic audio
21 recording of the proceedings falls under that same
22 caveat.

23 THE COURT: So that would actually be excluded
24 even though -- you're arguing for it to be
25 excluding even though it's specifically provided

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1 for in 122 -- this hearing?

2 MS. POLK: Yes, Judge. I think for this
3 hearing, under the balancing test that the rules
4 direct the Court to do, the weight of the factors
5 falls more heavily in favor of excluding audio and
6 video recording of this particular hearing. The
7 state does not object to still photography.

8 THE COURT: Oh. Okay.

9 Someone from the defense. I saw that
10 there was a pleading indicating there was no
11 objection but you had concerns about clothing.

12 MR. LI: Yes, Your Honor. Luis Li here. That
13 pretty much captures our point of view. The only
14 thing I'd add is just a logistical matter.

15 There are significant amount of material
16 that was filed under seal and pursuant to a
17 protective order related to Mr. Ray's financial
18 documents. And -- you know -- they include tax
19 returns and other material, which we would as a
20 logistical matter prefer not to be subject of an
21 open hearing.

22 THE COURT: And that's -- well, if there is
23 not anything else on that, I'm just going to make
24 some decision, then, consider this to be the
25 hearing unless someone objects. And I'll just have

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1 some kind of minute entry on what I intend to do.

2 Because -- well, one thing is that's
3 going to bear on that is what's been brought up by
4 now both by Ms. Polk and Mr. Li. And that is how
5 to conduct a hearing where a lot of it is going to
6 be dealing with records that are under seal. And
7 I've been thinking about that the past few days.
8 And that is very problematic if the hearing is
9 open.

10 So -- I mean, I don't know what kind of
11 detail -- I don't know what can be discussed. When
12 I originally saw that the records were to be
13 sealed, I thought it would have to do with
14 identifying information, identification of accounts
15 or credit card numbers. All of those things do not
16 need to be made a public record, it would seem to
17 me.

18 But just the basic type of arguments you
19 get into in bond hearings, release hearings,
20 normally those things are public and they're talked
21 about.

22 But what is contemplated for this hearing
23 by the attorneys, by the parties, with regard to
24 what would proceed and who would be present when so
25 many of the records are under seal?

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1 Mr. Polk or Mr. Hughes.

2 MS. POLK: Your Honor, I don't know that the
3 state has a position on that. We have not
4 challenged whether or not -- or examined whether or
5 not the records should be filed under seal -- that
6 the defense filed the records under seal. We just
7 responded and have left them under seal. But what
8 the basis is for those records under seal we have
9 not really examined.

10 I think it's possible that some of --
11 there are some privileges that attach to some of
12 the records but perhaps not to all of them.

13 MR. LI: Your Honor, the effort here has
14 been -- on the part of the defense has been through
15 really to almost assume the burden, which obviously
16 it's not our burden, but almost assume the burden
17 that Mr. Ray doesn't have the financial resources
18 described by the state.

19 And the only way you can do that is to
20 produce financial records that include -- you
21 know -- tax returns and personal bank accounts and
22 what have you.

23 If the state were willing to just -- you
24 know -- I don't -- I know this is going to be
25 contested. But that's the reason all the documents

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1 have been filed is that we, essentially, have been
2 trying to convince the state that Mr. Ray does not
3 have the money that the state thinks he does. And
4 the only way to do that to their satisfaction is to
5 actually provide bank records and tax returns.

6 And -- you know -- the state specifically
7 asked us for those documents. So we've given them
8 to them. And -- you know -- we're filing them with
9 the Court as well so that the Court will have a
10 record of what the state has seen and what's out
11 there. And I don't know how else to handle that.

12 MS. POLK: Your Honor, I agree with what
13 Mr. Li has said. The -- we certainly have been
14 meeting with defense counsel in an attempt to grasp
15 a financial picture of the defendant.

16 I am concerned, though, that the parties
17 cannot -- in an otherwise public forum we cannot --
18 the record should be exempt from the public purview
19 if there is not some statute or case or law that
20 allows the records to be withheld from the public.

21 THE COURT: There have been requests for those
22 records. I think everyone is aware of that. Just
23 a number of requests that come in in different
24 forms for sealed records. And that was something
25 that has to be taken up as well. But there really

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1 hasn't been an opportunity prior to now.
 2 Mr. Li, what can you say about that,
 3 having a closed hearing? I understand that there
 4 was an agreement right from the start at the
 5 initial appearance that these financial records
 6 would be sealed at that point. So I know there has
 7 been an agreement between both sides here. But --

8 MR. LI: I would have to get back to the Court
 9 about specific legal provisions that would permit
 10 that. It is -- you know -- I can speak to other
 11 jurisdictions and other practices. But it's fairly
 12 routine that things like tax returns and what have
 13 you are sealed.

14 And -- you know -- we feel sort of
 15 between a rock and a hard place here, Your Honor.
 16 Essentially, either we have to accept the state's
 17 articulation that Mr. Ray has \$10 million, which he
 18 simply doesn't, or we have to -- you know -- put
 19 these documents in front of the state that
 20 demonstrates that he doesn't but then have all
 21 these privacy concerns and what have you.

22 And then the state may take the position
 23 that even though both parties agree that the
 24 material should be covered by a protective order
 25 that the state might not continue to believe that.

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1 And I think that -- I don't know how else
 2 we can deal with this. I mean, I can't simply walk
 3 in there and say, Your Honor, Mr. Ray doesn't have
 4 any money. And then the state will say well, prove
 5 it. I can -- I'd love to be able to have the Court
 6 simply take me at my word. But I don't think
 7 that's going to happen tomorrow.

8 MS. POLK: And, Your Honor, we will research
 9 the issue between now and tomorrow's hearing. If
 10 the law allows us or the Court to seal the
 11 documents or have some kind of protective order,
 12 the state has no issue with that. I was just
 13 raising the fact that because the media and the
 14 public is so intensely interested that if there is
 15 a challenge to that, at this point I don't know
 16 where the law would fall.

17 MR. LI: Your Honor, could we do something
 18 similar to what is done in many of these sort of
 19 public record type situations, in that the Court
 20 could review the material in camera but not ex
 21 parte and make some sort of determination along
 22 those lines?

23 I think that's what typically happens,
 24 for instance, with respect to the search warrant
 25 material and the police reports and other things

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1 that have been discussed in this case and earlier
 2 times. Maybe a way to approach that.

3 THE COURT: We're talking about sealed
 4 records. These weren't ex parte. Both of you have
 5 seen the sealed records.

6 MR. LI: I understand. I just wanted to be
 7 clear about what in camera -- sometimes when I say
 8 "in camera," I think there is a misunderstanding
 9 that it means anything other than just -- you
 10 know -- in camera and ex parte. I just wanted to
 11 be clear. I didn't mean just ex parte.

12 THE COURT: I have followed a procedure before
 13 when there is an examination of records where
 14 counsel from both sides are there, and the record
 15 is given a general description, and there is some
 16 discussion of it, and there is a decision made.

17 There is a case that talks about that. I
 18 don't have it on the tip of my tongue here
 19 obviously.

20 But for tomorrow there is a hearing. And
 21 I don't have any problem, I don't think, saying
 22 that the records themselves are sealed at this time
 23 in any event. But in order to have meaningful
 24 testimony from both sides, the content is going to
 25 be explored. And I don't know if that's not going

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1 to -- you know -- render superfluous the effort to
 2 try and keep those things under seal.

3 But if I'm going to have some law, I
 4 would appreciate that. But at this time I'm not
 5 going to order that the record be unsealed. Both
 6 parties have agreed to that. And the records
 7 themselves will remain sealed at this point.

8 But I guess we will just get into the
 9 testimony and see what happens if that's -- if we
 10 don't have -- if I don't have the basis to make a
 11 legal decision prior to that time.

12 MR. LI: I would welcome the opportunity to
 13 discuss with Mr. Hughes and Ms. Polk to the extent
 14 they want to participate -- to discuss with the
 15 state how to handle this. And maybe we can limit
 16 the areas of discussion. If the state doesn't
 17 agree, that's their prerogative. But maybe there
 18 is some way the parties can discuss it to limit the
 19 surprises to everyone.

20 THE COURT: I'd appreciate that if you could
 21 have those discussions. But for now we'll just
 22 start the hearing and go from there.

23 The other thing I wanted to discuss, I
 24 was going to ask that the parties think about trial
 25 dates. Because I am actually contemplating setting

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1 a trial date tomorrow, as a matter of fact. So I'd
2 like you to look into that.

3 MR. LI: We'll do that, Your Honor.

4 THE COURT: I'm looking through some notes I
5 have. Those are the things I wanted to discuss.

6 One other thing is I was going to suggest
7 vacating the CMC, the case management conference
8 that had been set for March 15 -- that's a Monday
9 just on the calendar -- and set that for March 16
10 at 9:00 o'clock -- that's a Tuesday -- but allow
11 two hours. And some of these pending issues can be
12 discussed in more detail. I wanted you to consider
13 that as well, if you would. We can discussion that
14 tomorrow.

15 Is there anything else anyone would like
16 to place on the record here?

17 MS. POLK: Your Honor, this is Sheila Polk. I
18 do have some concern with -- it sounds like the
19 Court -- have you made a determination about
20 cameras in the courtroom? I'm going back to it
21 because I'm a little bit concerned. The state has
22 received motions from KPNX and broadcasting --
23 Phoenix Newspapers, Inc.

24 And I'm just concerned at what the Court
25 has -- if we're having oral argument right now,
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1 there are parties who have requested to intervene.
2 I just wanted to bring that to the Court's
3 attention.

4 THE COURT: Well, I'll have to see what's
5 filed. It was filed while I was in Prescott. I
6 was trying to keep that, but I was in Prescott last
7 week for three days. And I don't know what they
8 added. But thank you, Ms. Polk.

9 That's -- there was intervening allowed.
10 But last time -- again, I think it's hearing by
11 hearing in any event.

12 MS. POLK: The Court also is not obligated to
13 grant oral argument. I just wanted to bring that
14 to the Court's attention. That motion has been
15 filed requesting both still cameras as well as
16 video recording cameras for the hearing tomorrow.

17 THE COURT: Thank you. I'll just look at
18 whatever was filed. I was hoping I could get some
19 kind of order out tomorrow morning. But people
20 will be here and want to be heard. If they're
21 permitted to intervene, of course, they can.

22 So I'll just -- plan on probably having
23 to take or hear some argument and have some hearing
24 before the proceeding starts, which is what's
25 happened so far.

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1 MS. POLK: I hear the Court's concern that we
2 have limited time tomorrow, and focusing on the
3 bail is where the time should be spent.

4 THE COURT: Thank you. Anything else?

5 All right. Then --

6 MR. McGRODER: Excuse me, Your Honor. This is
7 Pat McGroder speaking.

8 THE COURT: Yes, sir.

9 MR. McGRODER: Your Honor, did I hear 3:30 or
10 3:00 o'clock?

11 THE COURT: I think I misspoke and said 3:30
12 is what I think happened. It was -- if someone has
13 the time handy -- set for 3:00 o'clock, I believe.

14 MR. McGRODER: Yeah. That's my recollection,
15 Your Honor.

16 THE COURT: I think it's 3:00 o'clock. Of
17 course, there is the website now that's supposed to
18 have all the orders. My judicial assistant is
19 confirming it's 3:00 o'clock.

20 MR. McGRODER: Thank you.

21 THE COURT: Okay. Thank you. We'll adjourn.

22 MS. POLK: Thank you.

23 MR. LI: Thank you.

24 MR. HUGHES: Thank you, Your Honor.

25 (The proceedings concluded.)

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1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss. REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California
7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action

16 In witness whereof, I have affixed my
17 signature this 13th day of February, 2012

23 -----
24 MINA G. HUNT, AZ CR No 50619
25 CA CSR No 8335

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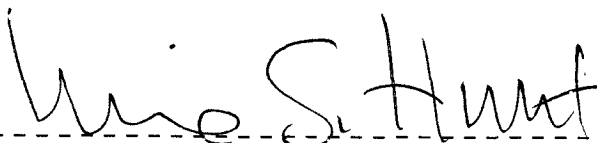
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